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EXAMINER

CHUMPITAZ, BOB R

ART UNIT

PAPER NUMBER

3629

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/731,928	Applicant(s) YAMAMOTO ET AL.	
	Examiner BOB CHUMPITAZ	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 15-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The following is a Final Office action in response to communication received November 24, 2008. Claim 3 has been amended, claims 1, 2 and 4-14 have been cancelled, and claims 15-23 have been added. Therefore, claims 3 and 15-23 are pending and addressed below.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 19-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claim 19, as best understood, recites a brokering method using a context in a distributed system in which a plurality of devices are coupled to each other through a network, the method comprising: “preparing a service scenario”, “extracting the devices”, “detecting the devices”, “creating correspondence information”, and “executing the service”, however as presented in the claim it is not directed to any form of structure and could equate to software components. Based on the recent precedent for the Federal Circuit from *In re Bilski*, the machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. See *Benson*, 409 U.S. at 70. Certain considerations are applicable to analysis under either branch. First, as illustrated by *Benson* and discussed below, the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to

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impart patent-eligibility. See *Benson*, 409 U.S. at 71-72. Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity. See *Flook*, 437 U.S. at 590. The claimed process contains physical steps, it does not involve transforming an article into a different state or thing. Therefore, Applicants' claim is not drawn to patent-eligible subject matter under § 101, because the applicable test to determine whether a claim is drawn to a patent-eligible process under § 101 is the machine-or-transformation test set forth by the Supreme Court and clarified herein, and Applicants' claim here plainly fails that test. See *e.g. In re Bilski and Warsaw*, (Fed. Cir. 2008).

Claims 20-23 depend from claim 19 and do not cure the deficiencies set forth above.

Therefore, claims 20-23 are also rejected as being directed to non-statutory subject matter.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: In the claims the term “detection unit”, “extraction unit”, “creation unit”, and “service execution unit” appear to lack support in the specification. With respect to the “detection unit”, “extraction unit”, “creation unit”, and “service execution unit” in claims 3 and 15-18, 37 CFR 1.75(d)(1) provides, in part, that “the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description.” The examiner would like

clarification as to which structure, materials, or acts perform the functions as recited in the claims. No new matter should be added.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 15-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. When the examiner considers the “detection unit”, “extraction unit”, “creation unit” and “service execution unit”, the scope of the claims is unclear so as not to insure that the public is informed of the boundaries of what constitutes infringement of the patent. Furthermore, it is unclear as to what applicants regard as the invention so that it can be determined whether the claimed invention meets all the criteria for patentability and whether the specification meets the criteria of 35 U.S.C. 112, first paragraph with respect to the claimed invention. MPEP 2173.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary

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skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Combs et al. (US 7,058,508 B2, hereinafter Combs) in view of Kenji Fujimoto, Shozo Azuma, Masaki Minami, Yasuhiko Miyazaki (JP 2001-195372 A, hereinafter Fujimoto) in further view of Nakanishi et al. (US 2003/0134634 A1, hereinafter Nakanishi), and in further view of Sameshima et al. (US 6,983,306 B1, hereinafter Sameshima).

As per claim 3, Combs discloses wherein the detection unit is configured to detect the devices located at the site by acquiring information on the devices extracted by the extraction unit (col. 3, lines 12-38 the automated building service broker can include a Global Positioning System (GPS) data processor for processing the GPS data associated with the communicatively linked service providers the GPS data corresponding to a geographic position).

As per claim 15, Combs discloses a distributed system in which a plurality of devices are coupled to each other through a network, comprising:

- a storage unit (claim 27: machine readable storage; col. 3, lines 3-6 history log; col. 3, lines 30-38 event log; col. 7, lines 14-16 database);
- a processing unit (col. 3, lines 12-16 data processor); and
- a communication unit (col. 3, lines 3-12 communication network; col. 7, lines 26-32 communication device);

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wherein the storage unit is configured to store a service scenario and a context (col. 3, lines 39-43 maintenance database, service provider database, equipment database, historical database),

Combs discloses the step for maintaining a maintenance database for tracking routine building system maintenance, which indicates a scheduled maintenance event (Abstract; col. 4, lines 44-56), but does not expressly disclose a service scenario.

However, Fujimoto teaches preparing a service scenario [0012], and where service scenarios are retrieved from a service scenario repository with the utilization location of the user a key and the service scenario to be executed is selected from the retrieved service scenarios based on the user information and where the service scenario is executed and the user is provided with the service (Abstract).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the maintenance records of Combs to include a service scenario repository as taught by Fujimoto in order to provide the functions required to perform a specified service.

The Combs/Fujimoto combination discloses the claimed limitation, but do not expressly disclose wherein the service scenario describes functions necessary to provide a service and relationships between the functions, and the context serves as a criterion for selecting

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one or more devices to be used in providing the service (Combs: col. 1, lines 19-29 building air conditioning systems, smoke detection systems, fire alarm systems, security systems, lighting systems and medical monitoring, each need to be monitored and must be repaired when problems arise and in addition to alarm notification; col. 6, line 67 - col. 7, line 2 control system can be used to monitor the status of each building system in the building and can detect anomalies; col. 4, lines 57-62 selecting a service provider for servicing the building system).

However, Nakanishi teaches wherein a service control apparatus implements functions required for providing various types of services [0036], and wherein the scenario control layer selects a service scenario in accordance with the contents of the restored information [0059]. In addition Nakanishi teaches wherein the service scenario implementing means implements the service scenario by processing the object selected by the object selection means [0009], and wherein objects which are to be processed when implementing the service scenarios for the respective services, are retained in the service processing equipment [0026].

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the maintenance records of Combs and the service scenario of Fujimoto to include contents of information and functions required for providing services as taught by Nakanishi in order to effectively perform the requested service.

Combs further discloses wherein the processing unit comprises:

an extraction unit being configured to extract the devices necessary for performing the service based on the service scenario (col. 1, line 59 - col. 2, line 4 Bergeron teaches a control system that can access a database of field service engineers designated to provide services to a particular site and establishing communication; see also, col. 3, lines 12-38 the service provider can be selected based on whether the selected service provider is suitable to perform required maintenance and repair; see also Claim 27: computer program having a plurality of code sections executable by a machine to perform the steps of responsive to said detection, automatically selecting a service provider suitable for servicing said building system).

a detection unit being configured to detect available devices located at a site wherein the service can be provided in response to a request from a user according to the context (col. 6, lines 19-25 an automated building service broker can detect in a building system a need for service, either in response to a routine event or error condition; see also Claim 27: computer program having a plurality of code sections executable by a machine to perform the steps of electronically detecting a need for service in a building system in a building site);

a creation unit being configured to create correspondence information on linkage between the detected devices, the correspondence information including function

information, device information, process information, and data destination information; and

a service execution unit being configured to execute the request by linking the detected devices based on the correspondence information (Claim 27: computer program having a plurality of code sections executable by a machine to perform the steps of providing an electronic notification of said service need over a communication link to said selected service provider and monitoring said communication link for an electronic response to said electronic notification querying),

The Combs/Fujimoto/Nakanishi combination discloses the claimed limitation, but does not expressly disclose wherein, in response to a context change while the request is being executed, the detection unit redetects available devices according to the changed context, the creation unit rewrites correspondence information on linkage between the redetected devices, and the service execution unit allocates data destination with reference to the correspondence information while transmitting data (Comb: col. 4, lines 23-28 monitoring the communications link for an electronic response to the electronic notification; see also col. 4, lines 41-43 step of detecting a need for service in a building system can include sensing an error condition in the building system; see also col. 5, lines 54-67 responding to an electronic request with an electronic response and transmitting additional

geographical positioning data to the automated building service broker after the step of responding; see also col. 6, line 54 - col. 7, line 5 the control system can detect anomalies; see also col. 10, lines 52-55 maintenance database can be updated).

However, Sameshima teaches a processing program of devices to deal with changes and updates (col. 1, lines 6-22 a distributed system which is employed in the environment where the state of the surroundings of the control machines or the objects is continuously changed due to transfer of a control machine or and object, or a change in a control target; see also, col. 3, lines 16-24 an inter-device cooperative control system and an apparatus therefore in which each device can change its operational conditions; see also, col. 3, lines 35-46 to form a link according to changes in the environment and conditions; see also, col. 12, lines 8-67 when a change occurs in its device conditions, the device sends a conditional change notice, and the device receives this notice, see Fig. 31 and associated text). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the services of Combs/Fujimoto/Nakanishi to include a processing program as taught by Sameshima in order to provide a process that can react to service changes conditions and since system conditions change with time according to the configuration and operational conditions of devices constituting the system.

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As per claim 16, Combs further discloses wherein the extraction unit extracts the devices by inquiring a server holding a database that stores attribute information of the devices, and the extraction units further selects devices necessary for the service by exchanging information between the devices having a function described in the service scenario (col. 1, line 59 - col. 2, line 4 Bergeron teaches a control system that can access a database of field service engineers designated to provide services to a particular site and establishing communication; see also, col. 3, lines 12-38 the service provider can be selected based on whether the selected service provider is suitable to perform required maintenance and repair; see also col. 6, lines 25-30 building service broker can retrieve a list of service providers suitable for servicing the specified building system; see also col. 8, lines 24-30 server interactions);

As per claim 17, the Combs/Fujimoto/Nakanishi combination discloses all the elements of the claimed limitation, but do not expressly disclose wherein in response to a situation change of the devices located at the site during the service execution, the detection unit redetects the devices.

However, Sameshima teaches a processing program of devices to deal with changes and updates (col. 1, lines 6-22 a distributed system which is employed in the environment where the state of the surroundings of the control machines or the objects is continuously changed due to transfer of a control machine or and object, or a change in a control target; see also, col. 3, lines 16-24 an inter-device cooperative control system and an apparatus therefore in which each device can change its operational conditions; see also, col. 3, lines 35-46 to form a link according to changes in the environment and conditions; see also, col. 12, lines 8-67 when a change occurs in its device conditions, the device

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sends a conditional change notice, and the device receives this notice, see Fig. 31 and associated text).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the services of Combs/Fujimoto/Nakanishi to include a processing program as taught by Sameshima in order to provide a process that can react to service changes conditions and since system conditions change with time according to the configuration and operational conditions of devices constituting the system.

As per claim 18, Combs further discloses wherein the creation unit creates the correspondence information for each user requesting a service (col. 6, lines 60-63 upon detecting an anomaly, the control system can request from the automated building service broker corresponding maintenance and repair; see also col. 9, lines 38-63 following the transmission of the work request a work record can be created in a historical database in which historical maintenance records can be tracked), and allocates functions from a single device to different users according to the services provided to the users, and releases the functions allocated to each user when the service to the user is completed (col. 1, lines 43-47 when the necessary repairs have been completed a repair record can be updated and archived in a data base; see also col. 2 lines 59-67 control system can access a database of field service engineers designated to provide services to particular remote sites in response to alarm signals received from those sites; see also col. 5, lines 30-33 completion time; see also col. 7, lines 48-53 the service provider database can be consulted to identify a set of approved service providers; see also, col. 9, lines 14-18 once a set

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of suitable service providers has been identified the service providers in the set can be queried to identify a current position for each service provider; see also, col. 10, lines 35-38 transmit completion data to the automated building services broker).

As per claim 19, Combs discloses a brokering method using a context in a distributed system in which a plurality of devices are coupled to each other through a network (col. 2, line 66 – col. 3, line 11 automated building service brokering....automatically monitors multiple devices in multiple locations, locates and alerts services providers to repair or maintenance needs), the method comprising:

preparing a service scenario and a context (col. 1, lines 31-47 building management professionals maintain maintenance records which indicate preventative maintenance and routine repair....record used to remind building management to schedule service. The Examiner interprets the service providers and building systems entities to represents the plurality devices required to perform a service scenario).

Combs, however does not explicitly disclose a service scenario.

Fujimoto teaches preparing a service scenario [0012], and where service scenarios are retrieved from a service scenario repository with the utilization location of the user a key and the service scenario to be executed is selected from the retrieved service scenarios based on the user information and where the service scenario is executed and the user is provided with the service (Abstract).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the maintenance records of Combs to include a service scenario repository as taught by Fujimoto in order to provide the functions required to perform a specified service.

The Combs/Fujimoto combination disclose the claimed limitation, but do not expressly disclose wherein the service scenario describes functions necessary to provide a service and relationships between the functions, and the context serves as a criterion for selecting the devices to be used in providing the service.

However, Nakanishi teaches wherein a service control apparatus implements functions required for providing various types of services [0036], and wherein the scenario control layer selects a service scenario in accordance with the contents of the restored information [0059]. In addition Nakanishi teaches wherein the service scenario implementing means implements the service scenario by processing the object selected by the object selection means [0009], and wherein objects which are to be processed when implementing the service scenarios for the respective services, are retained in the service processing equipment [0026].

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the maintenance records of Combs and the service scenario of

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Fujimoto to include contents of information and functions required for providing services as taught by Nakanishi in order to effectively perform the requested service.

Combs further discloses extracting the devices necessary to provide the service based on the service scenario (col. 1, line 59 - col. 2, line 4 Bergeron teaches a control system that can access a database of field service engineers designated to provide services to a particular site and establishing communication; see also, col. 3, lines 12-38 the service provider can be selected based on whether the selected service provider is suitable to perform required maintenance and repair);

Combs further discloses detecting the devices located at a site wherein the service can be provided to a user according to the context (col. 3, lines 12-38 the automated building service broker can include a Global Positioning System (GPS) data processor for processing the GPS data associated with the communicatively linked service providers the GPS data corresponding to a geographic position; see also, col. 6, lines 30-34 a service provider can be selected from a list according to the geographic proximity of the selected service provider to the specified building system);

Combs further discloses creating correspondence information on linkage between the detected devices, the correspondence information including function information, device information, process information, and data destination information (col. 3, lines 3-57 tracking the progress of the repair maintenance, and maintain a history log of the relevant

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information relation to each device and each repair or maintenance request; and where the service provider can be selected based on geographic position of particular service provider; see also col. 9, line 58 - col. 10, line 9 work record can be created in a historical database).

Combs further discloses executing the service by linking the devices detected based on the correspondence information (col. 13, lines 6-28 a plurality of service providers communicatively linked to automated building services broker, wherein each service provider can perform maintenance and repair on at least one of said building systems),

The Combs/Fujimoto/Nakanishi combination discloses the claimed limitation, but does not expressly disclose wherein, in response to a context change while the service is being executed, the distributed system redetects a device according to the changed context in the detecting step, rewrites the correspondence information for linking the redetected devices in the creating step, and allocates data destination with reference to the correspondence information while transmitting data in the executing step (Comb: col. 4, lines 23-28 monitoring the communications link for an electronic response to the electronic notification; see also col. 4, lines 41-43 step of detecting a need for service in a building system can include sensing an error condition in the building system; see also col. 5, lines 54-67 responding to an electronic request with an electronic response and transmitting additional geographical positioning data to the automated building service broker after the step of responding; see also col. 6, line 54 - col. 7, line 5 the control

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system can detect anomalies; see also col. 10, lines 52-55 maintenance database can be updated).

However, Sameshima teaches a processing program of devices to deal with changes and updates (col. 1, lines 6-22 a distributed system which is employed in the environment where the state of the surroundings of the control machines or the objects is continuously changed due to transfer of a control machine or and object, or a change in a control target; see also, col. 3, lines 16-24 an inter-device cooperative control system and an apparatus therefore in which each device can change its operational conditions; see also, col. 3, lines 35-46 to form a link according to changes in the environment and conditions; see also, col. 12, lines 8-67 when a change occurs in its device conditions, the device sends a conditional change notice, and the device receives this notice, see Fig. 31 and associated text).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the services of Combs/Fujimoto/Nakanishi to include a processing program as taught by Sameshima in order to provide a process that can react to service changes conditions and since system conditions change with time according to the configuration and operational conditions of devices constituting the system.

As per claim 20, Combs further discloses extracting the device by querying a server holding a database that stores attribute information of the devices (col. 1, line 59 - col. 2, line 4 Bergeron

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teaches a control system that can access a database of field service engineers designated to provide services to a particular site and establishing communication; see also, col. 3, lines 12-38 the service provider can be selected based on whether the selected service provider is suitable to perform required maintenance and repair; see also, col. 6, lines 25-30 retrieve a list of service providers; see also col. 8, line 19-37 conventional server interactions); and

selecting devices necessary for the service by exchanging information between the devices having a function described in the service scenario (col. 2, line 66 - col. 3, line 11 the automated building service broker can be communicatively linked to a plurality of building systems and to a plurality of service providers each deemed suitable for performing maintenance and repair; see also, col. 4 lines 13-21 selecting a service provider suitable for servicing the building system; see also col. 7, lines 43-53 the service provider database can be consulted to identify a set of approved services providers for providing the scheduled maintenance).

As per claim 21, Combs further discloses detecting the devices located at the site wherein the service can be provided by acquiring device information extracted in the extracting step (col. 3, lines 12-38 the automated building service broker can include a Global Positioning System (GPS) data processor for processing the GPS data associated with the communicatively linked service providers, the GPS data corresponding to a geographic position col. 4, lines 41-56 the step of detecting a need for service in a building system can include sensing an error condition).

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As per claim 22, the Combs/Fujimoto/Nakanishi combination discloses all the elements of the claimed limitation, but do not expressly disclose redetecting the devices in response to a situation change of the devices during the service execution.

However, Sameshima teaches a processing program of devices to deal with changes and updates (col. 1, lines 6-22 a distributed system which is employed in the environment where the state of the surroundings of the control machines or the objects is continuously changed due to transfer of a control machine or and object, or a change in a control target; see also, col. 3, lines 16-24 an inter-device cooperative control system and an apparatus therefore in which each device can change its operational conditions; see also, col. 3, lines 35-46 to form a link according to changes in the environment and conditions; see also, col. 12, lines 8-67 when a change occurs in its device conditions, the device sends a conditional change notice, and the device receives this notice, see Fig. 31 and associated text).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the services of Combs/Fujimoto/Nakanishi to include a processing program as taught by Sameshima in order to provide a process that can react to service changes conditions and since system conditions change with time according to the configuration and operational conditions of devices constituting the system.

As per claim 23, Combs further disclose creating the correspondence information for each user requesting a service (col. 6, lines 60-63 upon detecting an anomaly, the control system can

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request from the automated building service broker corresponding maintenance and repair; see also col. 9, lines 38-63 following the transmission of the work request a work record can be created in a historical database in which historical maintenance records can be tracked); and

allocating functions from a single device to different users according to the services provided to the users, and releasing the functions allocated to each user when the service to the user is completed (col. 2 lines 59-67 control system can access a database of field service engineers designated to provide services to particular remote sites in response to alarm signals received from those sites; see also col. 7, lines 48-53 the service provider database can be consulted to identify a set of approved service providers; see also, col. 9, lines 14-18 once a set of suitable service providers has been identified the service providers in the set can be queried to identify a current position for each service provider).

Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

Please note:

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A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *e.g. In re Collier*, 158 USPQ 266, 267 (CCPA 1968)(where the court interpreted the claimed phrase “a connector member for engaging shield means” and held that the shield means was not a positive element of the claim since “[t]here is no positive inclusion of ‘shield means’ in what is apparently intended to be a claim to structure consisting of a combination of elements.”

Applicant(s) are reminded that optional or conditional elements do not narrow the claims because they can always be omitted. See *e.g.* MPEP §2106 II C: “Language that suggest or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. [Emphasis in original.]”; and *In re Johnston*, 435 F.3d 1381, 77 USPQ2d 1788, 1790 (Fed. Cir. 2006) “As a matter of linguistic precision, optional elements do not narrow the claim because they can always be omitted.” *In re Johnston*, 435 F.3d 1381, 77 USPQ2d 1788, 1790 (Fed. Cir. 2006)(where the Federal Circuit affirmed the Board’s claim construction of “further including that said wall may be smooth, corrugated, or profiled with increased dimensional proportions as pipe size is increased” since “this additional content did not narrow the scope of the claim because these limitations are stated in the permissive form ‘may.’”).

Response to Arguments

Based on the new grounds of rejections, Applicants arguments are moot.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BOB CHUMPITAZ whose telephone number is (571)270-5494. The examiner can normally be reached on M-TR: 7:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN WEISS can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-270-6494

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

B. C.
Examiner, Art Unit 3629

/JOHN G WEISS/
Supervisory Patent Examiner, Art Unit 3629